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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

VIVEK VISWANATHAN,

Plaintiff and Appellant,

v.

REGENTS OF THE UNIVERSITY OF CALIFORNIA,

Defendant and Respondent.

G057153

(Super. Ct. No. 30-2017-00957415)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, James Di Cesare, Judge. Affirmed.

Law Office of Corey Evan Parker and Corey Evan Parker for Plaintiff and Appellant.

Schiff Hardin, Jean-Paul P. Cart and Derin Kiykioglu for Defendant and Respondent.

* * *

Vivek Viswanathan appeals from the trial court's order denying his petition for a writ of mandate to overturn a residency decision by the registrar's office at the University of California (UC), Irvine (UCI). A residence deputy in the registrar's office denied his petition for classification as a California resident for tuition purposes for the fall 2017 quarter. Viswanathan believes his administrative appeal of the registrar's decision, which was denied, should have been granted by the Regents of the University of California (Regents). He also contends the trial court erred by not overruling the Regents with a mandamus order granting his residency request.

Viswanathan admits he did not read the UC's voluminous 40-page policy and guidelines concerning residency (Residence Policy, or Policy) before he submitted, in his second year of an unspecified Ph.D. program, his residency application. Nor did he give up indicia of his Texas residency, including voter registration and a driver's license, or obtain the same in California until after the registrar denied his petition. He also voted as a Texas resident in a Texas election during the period in question. As we explain, the standard of review governing the trial court's review on mandamus is deferential: the underlying agency's determination can only be overturned if it was arbitrary, capricious, or entirely lacking in evidentiary support. This standard similarly applies to our review on appeal. We therefore must affirm the trial court's ruling.

FACTUAL AND PROCEDURAL BACKGROUND

Consistent with the standard of review, we set out the relevant background material in the light most favorable to the decision below.

Viswanathan submitted his "Petition for Resident Classification" to the UCI registrar in late August 2017. On the form, he stated that he was 33 years old; his physical presence in California began on September 15, 2016; he was not dependent on his parents for financial support; and he had been employed in both Texas and California in 2016, but only in California in 2017. While he had registered a vehicle in California in

July 2017, he retained his Texas driver's license, listed Texas as his state of voter registration, acknowledged that in "the last fifteen months" he had only voted in Texas elections, and he identified Texas as the location of both of his bank accounts.

Viswanathan also attached his California "Nonresidents or Part-Year Residents" Income Tax Return for 2016, in which he specified that he did not own a home or property in California and estimated that he earned approximately 20 percent of his income in 2016 in California. He stated that he planned to file a full or partial-year California resident tax return for the 2017 tax year and that he had not been employed outside California in 2017.

In answering a question on his residency application under the heading, "Summer Physical Presence," regarding the months preceding the fall 2017 quarter, Viswanathan stated, "I was present from June 1 to July 25 when I visited my grandmother in Texas." Viswanathan did not clarify whether he was present "in California" or "in Texas" for that June and July period or whether he was in California "until" July 25, nor otherwise specify how long he had been with his grandmother "in Texas." A residence deputy from the registrar's office contacted Viswanathan by e-mail asking for clarification: "How long were you vacationing in Texas this summer?" The deputy also requested copies of his California driver's license and voter registration, if he had them.

Viswanathan responded, apparently by e-mail, but did not answer the residence deputy's request for information concerning the time he spent in Texas over the summer. Regarding voter registration, Viswanathan stated that "[i]n the last election, I was able to file absentee in Texas." He did not specify whether the election was for state, local, or national offices and/or issues, or for some combination thereof, nor whether he had voted in other Texas elections within the previous 15 months, besides "the last" one. He explained, however, "Since the next election is in 2018, I did not feel the need to register [in California] but I will do so."

Viswanathan provided some additional details in his supplemental response to the deputy. He volunteered that he did "not have a lease agreement" because he was living at his "boss['s]" home. Under a heading he entitled, "Why I do not have a CA license," Viswanathan told the residence deputy opaquely, "I have not engaged in an activity that creates the need to establish residency and can legally drive with a TX driver's license." He added that, according to his understanding, "[U]pon paying in[-]state tuition (or registering to vote in the state or filing for a homeowner property tax exemption), I will be legally required to acquire a CA license within 10 days and will do so." Viswanathan did not identify the source or sources on which he premised this understanding.

The UC Residence Policy, which Viswanathan did not read, spoke to these matters. The Policy stated: "**Elements of Residence.** Residence can be established, or altered, only by the union of physical presence and intent. Physical presence alone is insufficient; intent alone is insufficient."

The Policy noted that a person's domicile helps to determine residency. It defined "Domicile" as "The one location where a person is considered to have the most settled and permanent connection," and stated further that "[a] person can have only one domicile at a time." The Policy explained that a person's domicile depends on his or her subjective intent in that it is "the place where he [or she] intends to remain and to which, whenever temporarily absent, he [or she] has the intention of returning."

The Policy set out the following principle as a "**General Rule**" for residency determinations: "To be classified as a California resident for tuition purposes, an adult student . . . must have established a primary and permanent domicile in California for at least 366 days and *relinquished all ties to his/her past place(s) of residence.*" (Italics added.)

Noting the importance of "Intent to make California one's permanent home" as "a required element of residence," the Policy specified that "[i]ntent is

evaluated separately from physical presence and requires objective evidence to assist the residence deputy in assessing the totality of the individual[’s] conduct and circumstances." The Policy expressly cautioned residency applicants: "To satisfy the union of physical presence and intent, indicia of intent should be acquired and all out-of-state indicia relinquished at least 366 days prior to the [commencement of] the relevant term." For Viswanathan's fall 2017 residency application, this meant he was required to obtain and relinquish objective indicia of residency before he began the fall term in 2016.

The Policy was not inflexible on this point, however. It stated, "The University allows a limited period of time within the 366-day requirement to obtain legal indicia of intent and relinquish all ties to the past place of residence." The Policy handbook, on page 11, gave an example that mirrored Viswanathan's circumstances, stating "[S]tudents continuing enrollment at UC who are requesting a resident classification for the 2017 fall term must have established California legal intent and relinquished all out-of-state legal intent prior to *the end of the fall 2016 term*." (Italics and underlining added.) The Policy handbook further identified the critical date as "12/09/16," which was the "end of Fall Quarter 2016."

On September 13, 2017, a residence deputy in the registrar's office notified Viswanathan by e-mail that, "[a]fter reviewing your Petition for Resident Classification and all documents filed in conjunction with it for the quarter, you have been classified a **NONRESIDENT** for tuition purposes." The deputy explained that Viswanathan failed "to demonstrate that you have fulfilled the intent requirement" for residency. In support of this determination, the deputy noted, "You have continued to maintain your TX driver's license and voter registration, despite the fact that you claim CA to be [your] permanent domicile." The deputy added, "You state that you have not yet had a need to switch over your documents, but anticipate [doing] so once you obtain residency for tuition purposes or file for a homeowner property tax exemption"; the deputy did not find this position persuasive.

The deputy agreed that Viswanathan "fulfilled the 366 day physical presence and financial independence requirement[s]" for residency classification, and observed that he could both appeal the intent determination for the fall 2017 quarter and "petition to change your residency status for a future quarter . . . ." The deputy alerted Viswanathan that residency classification appeals should be taken to the "UC Office of the General Counsel" (OGC) and provided a hyperlink with instructions regarding how to file an appeal, including relevant e-mail and postal addresses.

Viswanathan did file an appeal and, in his supporting documents, included copies of his newly-acquired California driver's license and newly-submitted voter registration, which he sought and obtained after the adverse residency determination. His appeal was denied. A residency analyst at the OGC, N. Impey, communicated the appeal result to him by e-mail on September 27, 2017. Impey explained, "Your nonresident classification has been upheld on appeal based on your late acquisition of California legal indicia of intent and your maintenance of out-of-state indicia throughout a portion of the 366 days prior to the 2017 fall term."

The next day, Matt Bowers, the general counsel for Viswanathan's employer contacted Impey by e-mail. He explained that "Viswanathan ('Vish') is an executive-level employee at my firm, Rayliant Global Advisors, as well as its subsidiary, Rayliant Investment Research." Characterizing "[t]he UC's recent decision" as "disappointing," Bowers set out two paragraphs of new facts on which he asserted "Vish has clearly demonstrated" he qualified for resident tuition.

Bowers explained, "Vish has been employed continuously by Rayliant since April 1, 2016. A condition of his employment was permanent relocation to California, which he completed in mid-2016. In fact, the only reason Vish is obtaining his Ph.D. at UC Irvine—as opposed to another research university—is that our firm's California office is based in Irvine. [¶] Vish has been paid by Rayliant exclusively in California. The firm has withheld California taxes for the entirety of his employment.

Vish filed his 2016 taxes in California. He purchased a car in California that is registered in-state. He has spent just two weeks visiting family in San Antonio since commencing his employment with Rayliant."

Apart from his vehicle registration, Viswanathan had included none of these indicia of residency in his residency application or the supplemental information he provided to the residence deputy. Bowers closed his e-mail to Impey, "Please advise what further administrative options are available to Vish; and, if no further administrative options are available, what legal actions Vish can take with respect to the UC's determination."

Responding to Bowers's e-mail the same day, Impey did not offer advice regarding Viswanathan's legal remedies, if any, but noted "there is a one-time opportunity to appeal." She clarified in a subsequent e-mail that Viswanathan already had "submitted his appeal application on 9/25/2017 to contest the campus nonresident determination [and] the appeal was denied on 9/27/2017." Nevertheless, Impey addressed some of Bowers's issues: "No one item (refer to page 12, Legal Indicia of Intent) is an exclusive requirement of intent . . . ." Page 12 of the Policy gave numerous examples of "Relevant indicia of intent to establish or maintain California residence," none of which is designated by the Policy as exclusive or dispositive evidence of intent.

Impey also undertook what she termed "a second review of [the] appeal" for Bowers's sake, in which she "hope[d] that [she] was able to sufficiently answer your questions regarding UC residence policy as well as to clarify the basis for the nonresident decision and denial on appeal . . . ." Among other resources, Impey directed Bowers to the online location of the Residence Policy, and included hyperlinks on UCI's and Regents's websites, noting generally that "[i]nformation regarding UC resident tuition and residence requirement is available on every UC campus website . . . ." She stated that the residency decision and denial on appeal were "fully supported by Mr. Viswanathan's statements as contained in his [Residency] Petition," and

concluded, ”Unfortunately, Mr. Viswanathan provided no basis to overturn this decision on appeal . . . .”

In undertaking this additional layer of review, Impey reached a different conclusion than the residence deputy on whether Viswanathan met the “physical presence” factor to establish residency by living in California for more than a year. She interpreted Viswanathan’s statement on his residency application regarding his summer visit to Texas to mean “that he was absent from California from 6/1/2017 through 7/25/2017 to visit family in Texas . . . .” She concluded such a lengthy absence meant he failed to satisfy the physical presence requirement, in addition to failing to demonstrate the requisite intent to permanently reside in California.

Viswanathan then sought a writ of mandate (Code Civ. Proc., § 1085) in the superior court to require the Regents to classify him as a California resident for tuition purposes. According to the Regents, the trial court “took up the physical presence requirement issue, though neither party argued it, and determined that Appellant’s absences from California in the past year ‘far exceed[ed]’ the six week grace period allowed under the Policy.”

The trial court also observed that the UC Residence Policy distinguishes between a physical presence requirement and an intent to make California one’s permanent home. The former requires physical presence in California for more than a year, i.e., 366 days, with exceptions allowed for temporary visits outside the state, while the latter focuses on whether the student subjectively intended to be a California resident, rather than a resident of another state or country.

The trial court found as an independent basis for denying Viswanathan’s mandamus petition that he failed to satisfy the intent requirement, not just the physical presence requirement. The court concluded “it appears Petitioner did not want to or was simply not motivated enough to bother establishing indicia of permanence during the

366-day window, and only wanted to or bothered [to do so] after his application was denied."

The court entered its final order denying the writ request in November 2018, and Viswanathan subsequently appealed.

DISCUSSION

Viswanathan contends that while "UCI's residence officer correctly determined [he] **had** met the presence requirement" for residency purposes, she "then incorrectly based her decision of 'no intent' solely on an objective standard that [he] had a Texas driver's license and failed to register to vote." Marshalling facts in the light most favorable to his position—including many he failed to provide to the registrar and some that are new in this appeal—he argues the only reasonable conclusion is that he was necessarily a California resident for tuition purposes for the fall 2017 term.

"With rhythmic regularity," however, we must remind litigants that an appeal is not a new trial; to the contrary, "we have no power to judge of the effect or value of the evidence, to weigh the evidence, to consider the credibility of the witnesses, or to resolve conflicts in the evidence or in the reasonable inferences that may be drawn therefrom." (*Overton v. Vita-Food Corp*. (1949) 94 Cal.App.2d 367, 370 (*Overton*), disapproved on another ground in *Parsons v. Bristol Development Co*. (1965) 62 Cal.2d 861, 866, fn. 2.)

These appellate principles apply to the mandamus proceedings here. (Code Civ. Proc., § 1085.) In both the trial court and on appeal, courts reviewing a request for a writ of mandate to overturn agency action "may not reweigh the evidence or substitute [their] judgment for that of the agency." (*McGill v. Regents of University of California* (1996) 44 Cal.App.4th 1776, 1786 (*McGill*); *Stone v. Regents of University of California* (1999) 77 Cal.App.4th 736, 745.) Thus, even if a court would have reached a different

decision than the agency if the matter were for the court to decide in the first instance, it may not do so.

Instead, "'[i]n ordinary mandamus proceedings courts exercise very limited review "out of deference to the separation of powers between the Legislature and the judiciary, to the legislative delegation of administrative authority to the agency, and to the presumed expertise of the agency within its scope of authority."'" (*McGill, supra,* 44 Cal.App.4th at p. 1786.) Therefore, the judicial "inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support . . . ." (*Ibid.*)

As Viswanathan concedes, because "the trial court and appellate court perform the same function" on mandamus review (*McGill, supra,* 44 Cal.App.4th at p. 1786), our review is generally independent of and without reference to the trial court proceedings. Whenever a party challenges the evidentiary support for an underlying decision, we must bear in mind the burden of proof below. If the appellant bore the burden of proof in the original proceeding, the question for the reviewing court is whether the evidence *required* a decision in his or her favor as a matter of law. (*Vieira Enterprises, Inc. v. McCoy* (2017) 8 Cal.App.5th 1057, 1074.) We review such questions of law de novo. (*Ibid.*) Our responsibility to determine whether the underlying decision was entirely lacking in evidentiary support is similarly by de novo review, independent of the trial court's determination. (*McGill, supra,* 44 Cal.App.4th at p. 1786.) As the party seeking reclassification from nonresident to resident for tuition purposes, Viswanathan bore the burden of proof on his residency petition. (Evid. Code, § 500.)

The Legislature has defined residency for purposes of the Education Code in a somewhat circular fashion, i.e., a "resident" is "a student who has residence" under applicable legal provisions. (Educ. Code, § 68017.)[1] More specifically, a student is deemed a California resident for tuition purposes if he or she has "residence pursuant to

[1] All further statutory references are to this code unless noted.

Article 5 (commencing with Section 68060) of this chapter in the state for more than one year immediately preceding the residence determination date." (§ 68017.)

Section 68062 provides the following rules applicable to determining residence: "(a) There can only be one residence. [¶] (b) A residence is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he or she returns in seasons of repose. [¶] (c) A residence cannot be lost until another is gained. [¶] (d) The residence can be changed only by the union of act and intent."

The UC's regulations adopted in its Residence Policy implement and supplement these provisions with greater detail. They specify that the requisite intent is subjective in nature because a person's domicile for residency purposes is "the place where he [or she] intends to remain and to which, whenever temporarily absent, he [or she] has the intention of returning." The Policy states that determining this subjective intent depends on "the totality of the individual[']s conduct and circumstances." To aid in this determination, the Policy sets out various nonexclusive factors that "include": "Legal Indicia of Intent," "Other Indicia of Intent," and "Conduct that may be inconsistent with a claim of California residence."

"Legal indicia of intent" is not dispositive; it includes evidence of a formal nature, obtained through official channels, including, but not limited to: "Maintaining a California identification card or driver's license," "Registering to vote and voting in California," "Maintaining a California vehicle registration," "Registering for the Selective Service in California," proof of California state business or professional licenses, proof of eligibility for welfare or other social benefits through California agencies, and proof of paying California state resident income tax.

"Other Indicia of Intent" include, for example, "Remaining present in California during academic breaks," "Maintaining active savings and checking accounts in California banks," maintaining active social, religious, professional, or merchant

memberships in California, employment in California, "Establishing a home in California where permanent possessions are kept," and "Using a California permanent address on all records," among other indications of intent.

The Policy identifies these factors as potentially "inconsistent" with California residency: "Returning to the prior out-of-state place of residence during academic breaks, or residing out-of-state for an extended period," "Maintaining an out-of-state driver's license or identification card," and "Voting in another state." Students who read the Policy would be aware that visits out of state were not disqualifying, but would be "carefully scrutinized." The Policy also expressly cautions that students who "have not timely obtained California legal indicia [of residence] and/or continue to hold out-of-state legal indicia may be denied a resident classification."

Bearing the foregoing rules and regulations in mind, we cannot say as a matter of law that the residence deputy erred. That is, as the trier of fact, she was not *required* to determine on the evidence provided by Viswanathan that he met his burden to establish he had given up his Texas residency and intended only California to be his permanent home—whether or not he was in school. Under mandamus review, we cannot say the deputy's determination was entirely lacking in evidentiary support.

As stated by the Legislature and similarly reflected by the UC's Residence Policy, a person can only have one residence or domicile for tuition purposes at a time, and a new one is not gained until the former is given up. Viswanathan maintained crucial ties with Texas, while at the same time claiming to be a California resident. Perhaps most notably, he exercised a citizen's highest civic duty—voting—by casting his ballot in Texas, rather than in California when he had the opportunity to do so in the fall of 2016.

Viswanathan did not tell the deputy that he relocated to California permanently as a condition of his employment, or that he did so months before school started. Instead, the deputy could reasonably infer from the late September 2016 date Viswanathan gave on his residency application that attending UCI was his primary reason

for relocating—and therefore the move did not necessarily indicate an intent to make California his permanent home after graduation.

Similarly, it was not clear from Viswanathan's application that he intended to make California his permanent home. He ignored the deputy's direct question about the time he spent in Texas outside of school. Bowers later claimed it was "just two weeks visiting family in San Antonio," but Viswanathan did not provide this information when asked by the deputy. He now asserts for the first time on appeal that the visit lasted only a week, without giving any record citation.

Viswanathan's statement on his residency application about how he had spent his summer in 2017 mentioned a six-week period from June 1 to July 25 in the immediate context of visiting his grandmother in Texas. His answer was not a model of clarity. This is evident from the fact the residence deputy asked him to clarify the time he spent in Texas. Viswanathan never explained why he did not respond to the deputy's inquiry. Failure to answer a question supports an adverse credibility determination that, like the weighing of facts generally, we cannot second guess on appeal.

While not dispositive, Viswanathan's living arrangements added weight to the deputy's conclusion. Living in his employer's home could reasonably suggest his roots in California were tenuous. He left his possessions at the home when he was absent, but Viswanathan does not dispute that he provided only his work address on his residency application, suggesting impermanency and ambiguous intent even after a year in California.

All this is not to suggest that the evidence was one sided. Indeed, the residency question would have been a much closer call if Viswanathan had provided the registrar with all the information Bowers presented to the OGC after Viswanathan's administrative appeal was denied. Not only—according to Bowers—did Viswanathan's job require his "permanent relocation" to California, he also bought a vehicle once he

arrived. That would have been useful to show Viswanathan's substantial participation in the state economy.

But Viswanathan did not give the deputy this information. He stressed instead in his supplemental submission to the deputy that since he did not "need" a local license to drive, he continued to use his Texas license after his move to California. He left unexplained, however, why he failed to obtain a California identification card. Such identification by its nature, indeed by its very name, indicates a person is a California resident—which might have aided his application.

Bowers also stated in his e-mail that his company had been withholding taxes on Viswanathan's income in 2017. Viswanathan had attached his tax return to his residency application showing he had paid $1,539 in California income taxes in 2016, reflecting his tax obligation on the fraction (20 percent) of his income earned in California that year. He further indicated on his application that he planned to pay income taxes only in California in 2017, not in Texas or elsewhere. Bowers's information that Rayliant withheld California taxes from Viswanathan's salary, especially if he had given the amount, might well have bolstered Viswanathan's residency application if he paid significant income taxes in California in 2017. State income taxes that a resident student (or his or her parents) pay are an important component of the policy justification for California universities charging nonresident students higher tuition. (*Kirk v. Regents of University of California* (1969) 273 Cal.App.2d 430, 443-444.)

But none of the information Bowers offered is relevant to our review. It came too late. We are concerned here only with his fall 2017 application and the information he provided the deputy to make her decision.

Similarly, just as the standard of review limits our scope of review, this familiar appellate principle was also incorporated into the UC's guidelines for administrative review. The Residence Policy specified that "new information" could

only be considered if it "was not previously known by or available to the student" "despite the exercise of reasonable diligence." Viswanathan does not suggest anything precluded him from providing Bowers's information to the deputy rather than to the OGC for the first time after his administrative appeal, except perhaps his own oversight. He argues he obtained his California driver's license and voter registration "when he knew he *should*" (his italics), thereby tacitly admitting he ignored the Residence Policy. Ignoring applicable rules and guidelines is no excuse. Viswanathan did not argue below that the UC's publication of the Residence Policy was somehow inadequate to provide notice, so we need not address the issue further.

In sum, we cannot say the residence deputy's decision was entirely lacking in evidentiary support. Viswanathan voted as a Texas resident rather than as a California resident, ignored the deputy's question about his time in Texas immediately preceding his residency application, listed only his work address on the application as his permanent address even after a full year in California, and obtained late legal indicia of California residency only after the deputy's adverse decision. While Viswanathan's application showed he paid some California state income taxes in 2016, he did so by direct debit from Texas, where he kept his only bank accounts. This supported an inference that while Viswanathan worked in California, he sent his salary to Texas, as he did his vote, and spent his time there when he was not in school. This evidence more than satisfies the deferential standard of review.

Viswanathan also challenges the deputy's decision on grounds that it was arbitrary and capricious. We review this question de novo, independent of the trial court's determination. (*McGill*, *supra*, 44 Cal.App.4th at p. 1786.) On mandamus review, we assess whether "'an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.'" (*Ibid.*) The evidence above indicates a rational connection between the deputy's decision and the law governing residency.

Nevertheless, failure to follow applicable law or procedures may render an agency decision arbitrary and capricious. (*Pomona Police Officers' Assn. v. City of Pomona* (1997) 58 Cal.App.4th 578, 584.) Thus, a decision maker abuses his or her discretion by applying an incorrect legal standard. (See, e.g., *In re R.T.* (2015) 232 Cal.App.4th 1284, 1301.) "'"'"The scope of discretion always resides in the particular law being applied, i.e., in the "legal principles governing the subject of [the] action . . . ." Action that transgresses the confines of the applicable principles of law is outside the scope of discretion and we call such action an "abuse" of discretion.'" [Citation.] [¶] "[W]hen a . . . decision rests on an error of law, that decision is an abuse of discretion."'" (*Catalina Island Yacht Club v. Superior Court* (2015) 242 Cal.App.4th 1116, 1124.)

Viswanathan asserts reversal is required because "[t]he residence officer, by her own determination letter, made no subjective analysis of intent whatsoever, even though it is mandated in the regulations UCI relied upon." We disagree for several reasons. First, the mandamus provision under which we conduct our review (Code Civ. Proc., § 1085) "requires no written findings of fact in relation to administrative decisions reviewable under that statute." (*Anaheim Redevelopment Agency v. Dusek* (1987) 193 Cal.App.3d 249, 261.) Consequently, merely noting, as objective indicia of Viswanathan's intent, the fact that he "continued to maintain [his] TX driver's license and voter registration" does not mean those were the exclusive factors on which the deputy relied, or that she failed to evaluate his subjective intent.

To the contrary, the deputy stated at the outset of her decision notification that "[t]he intent to make California [one's] permanent home is a subjective element" in determining residency. Under the standard of review, we therefore presume she understood and correctly applied the governing criteria. Additionally, because intent is a subjective state of mind, it is "'usually proven by circumstantial evidence and inferences drawn from the evidence.'" (*Silas v. Arden* (2012) 213 Cal.App.4th 75, 90.) No one can

enter another's consciousness to conclusively determine his or her subjective mental state. Therefore, the deputy properly looked to objective manifestations of Viswanathan's intent. Indeed, she had no choice but to do so.

Viswanathan also challenges the UC's Residence Policy on grounds that it is fatally inconsistent in its treatment of legal indicia of intent. He argues, for example, that the Policy states "in one paragraph . . . that '***all***' ties [to another residence] must be relinquished (including driver's license and voter registration), while in another [provision] . . . a student '***should***' relinquish ties, and then in another paragraph, [the Policy states] that maintaining the out of state driver's license and voter registration '***may***' be inconsistent with the requisite intent." (Bolding & italics by Viswanathan.) Viswanathan observes that regulations that "are patently . . . internally contradictory . . . fail to adequately or fairly [give] notice [to] anyone of what is required."

As a preliminary matter, this contention is forfeited because Viswanathan admits he did not read the Policy; he therefore cannot argue he was misled in relying on its purportedly contradictory terms.

On the merits, moreover, the contention fails because the Policy stated its requirements regarding intent as a "**General Rule**." In specifying that the requisite intent to make California one's permanent home depends on "the totality of the individual['s] conduct and circumstances," the Policy articulates a subjective intent standard. By its nature, an individual's intent is open to interpretation and not subject to any single dispositive criterion. We therefore believe a careful reader would understand the Policy's repeated use of "should be acquired" and "may be denied" to be crucial exhortations to acquire "all" the indicia of intent that he or she reasonably could. There is no basis for reversal on this ground.

Viswanathan's challenges under sections 68071 and 68044 similarly fail both because he raises them for the first time on appeal and also on the merits. On mandamus review, as in other contexts, we independently review questions of statutory

construction and interpretation. (*City of Alhambra v. County of Los Angeles* (2012) 55 Cal.4th 707, 718.) We address each statutory section in turn.

Section 68071, first adopted in 1976, provides: "A student who has been entirely self-supporting and actually present in California for more than one year immediately preceding the residence determination date, with the intention of acquiring a residence therein, shall be entitled to resident classification until he or she has resided in the state the minimum time necessary to become a resident."

We do not know why the statute refers to a "minimum time necessary to become a resident" that may be longer than the "one year" the student has already been "present in California." It may be that the statute was adopted at a time when the residency requirement was longer than a year or there may be other instances besides higher education tuition classification in which the requisite residency period exceeds a year.

In any event, Viswanathan interprets section 68071's statutory language as a whole to mean that a self-supporting student need not demonstrate "satisfaction of the union of act and intent [requirement] stated in section 68062 . . . ." He therefore reasons that a self-supporting student need not demonstrate *any* intent to permanently reside in California. Not so. Section 68071 requires that the student must have "the *intention* of acquiring a residence" in California. (Italics added.)

Additionally, the definition of "resident" in section 68017 requiring the intent to permanently reside in California is set out in the definition section (Article 2) of the same chapter ("Student Residency Requirements") of the Education Code that includes section 68071. The permanent intent requirement therefore applies to all the subparts of the chapter, including section 68071 governing self-supporting students.

There is also no merit to his argument regarding section 68044. That provision directs each of California's state university and college systems to define "[o]ther factors which may be considered in determining California residency . . . ."

(§ 68044.) Viswanathan argues the Legislature has thus created inconsistency in its residency requirements by allowing the UC, the California State University system (CSU), and local community colleges to "adopt rules and regulations for determining a student's [residency] classification," as stated in section 68044. Viswanathan argues that in giving this authorization, "the [L]egislature failed to follow its own mandate." He points to what he deems is an overarching, preclusive command in section 68000: "It is the intent of the Legislature that the public institutions of higher education *shall apply uniform rules*, as set forth in this chapter and not otherwise, in determining whether a student shall be classified as resident or a nonresident." (Italics added.)

We are not persuaded by this argument for two reasons. First, Viswanathan does not identify any alleged inconsistency between UC, CSU, and community college residency requirements that would make any difference in his circumstances. As discussed, the residence deputy reasonably determined he did not meet the subjective intent requirement under the UC's Residence Policy, and nothing would have precluded her from making the same determination under CSU or community college residency guidelines. As respondent sets out, both of these systems, like the UC's, "contain an extensive list of factors and indicia to consider" for determining the subjective intent necessary under state law (§ 68017) for residency, "and both [similarly] require a holistic determination where no single factor is determinative."

Second, we see no reason to interpret section 68044 to say the UC, CSU, and community college systems may *not* articulate their respective residency requirements. To the contrary, the plain terms of the statute expressly give each system that authority.

DISPOSITION

The trial court's ruling denying Viswanathan's mandamus petition is affirmed. Respondent is entitled to its costs on appeal.

GOETHALS, J.

WE CONCUR:

O'LEARY, P. J.

MOORE, J.